

BOUTIN ASSOCIATES, P.L.L.C.
Attorneys At Law

Brenda E. Keith

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May 16, 2003

Michael Sclafani, Appeals Clerk
Waste Management Council
C/o DES, Waste Management Division
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Hand-delivered

Re: NHDES-WMD Standard Permit #DES-SW-SP-03-002, Dkt. #03-05 WMC

Dear Clerk Sclafani:

Enclosed please find the Town of Bethlehem's Objection to NCES's Motion to Dismiss for filing in the above-entitled matter. Pursuant to Env-WMC 202.03, we have enclosed 20 sets of all documents filed, including this letter.

Please do not hesitate to contact me if you have any questions.

Hand-delivered
COPY

Brenda E. Keith, Esq.

- c. Town of Bethlehem
Robert Monaco, Acting Commissioner
Dr. Philip O'Brien, Director Waste Management Div.
Michael Guilfooy, Acting Section Supervisor, Waste Management Div.
Bryan Gould, Esq. (via fax/e-mail & USPS)
Maureen D. Smith (via fax/e-mail & USPS)
File

**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL**

DOCKET #03-05 WMC

IN RE: NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.

Standard Permit No. DES-SW-SP-03-002

OBJECTION TO MOTION TO DISMISS APPEAL

The Town of Bethlehem, (the "Town") by and through its counsel, Boutin & Associates, P.L.L.C., files this Objection to Motion to Dismiss the above-entitled Appeal to the Waste Management Council ("WMC") of a Standard Solid Waste Facility Permit issued by the New Hampshire Department of Environmental Services-Waste Management Division ("DES-WMD") to North Country Environmental Services, Inc. ("NCES"), to build a Stage IV landfill in Bethlehem, and in support thereof states:

1. On or about May 7, 2003, NCES filed a Motion to Dismiss Appeal in the above-entitled matter.
2. A Hearing on the matter is scheduled for Thursday, May 22, 2003 at 11:00 a.m. in Room 112, although the Town has filed a Motion to Continue the Appeal until which time NCES appeals and the Court decides the recent ruling in the Grafton County Superior Court (NCES v. Town of Bethlehem, Docket #01-E-0177).
3. The Town objects to the Motion to Dismiss, as it believes it has raised significant issues that should be decided by the Waste Management Council prior to an appeal to the New Hampshire Supreme Court.

4. The Town does not believe that a dismissal, without first holding a hearing in this matter, will serve judicial economy, as the Town believes that under the statutory appeals scheme the Waste Management Council must first have the opportunity to correct any errors.

5. The interpretation of the statute, e.g. the RSA 149-M:11 public benefit requirement, must first be interpreted by the Council, which acts in this instance as the trial forum.

6. Without a Hearing where the Town will be allowed to offer written and oral testimony, the Council and the parties risk the possibility that the New Hampshire Supreme Court will refuse to decide certain issues as they were not reached in the tribunal below. See, e.g. State v. Spaulding, 147 N.H. 583 (April 16, 2002)(refused to address an issue not properly before the Supreme Court on appeal – indicating the rule is based on common sense and judicial economy, recognizing that trial courts (Council here) should have an opportunity to rule on issues and to correct errors before they are presented to the appellate court.) See also Miner v. A & C Tire Co., 146 N.H. 631, 634 (July 18, 2001).

7. The Town has the right to call witnesses, and cross-examine witnesses pursuant to Env-WMC 203.19, which the Town planned to do relative to the DES's consideration of the Town's concerns under RSA 149-M:11.

8. Without a Hearing the Town will be denied its rights of appeal under RSA 149-M:8, RSA 21-O:9, RSA 21-O:14, RSA 541, and Env-WMC 203.

WHEREFORE, The Town of Bethlehem requests the Waste Management Council:

A. Deny NCES's Motion to Dismiss, and

B. Grant the Town's earlier Motion to Continue the appeal proceedings until which time the appeal of the Grafton County Superior Court's Order is taken and decided by the New Hampshire Supreme Court, or alternatively,

C. Schedule a Hearing on the matter at a future Council meeting,

D. For other relief that may be just.


Respectfully submitted,

TOWN OF BETHLEHEM

By Its Attorneys,

BOUTIN & ASSOCIATES, P.L.L.C.

Date: May 16, 2003

By, 
Brenda E. Keith
One Buttrick Road
P.O. Box 1107
Londonderry, NH 03053
(603) 432-9566

CERTIFICATE OF SERVICE

I, Brenda E. Keith, Esquire, hereby certify that I made service of the foregoing Motion to Continue Appeal by hand-delivering a copy of the same to: Robert Monaco, Acting Commissioner New Hampshire Department of Environmental Services, Dr. Philip O'Brien, Director of Waste Management Division, Michael Guilfoy, Acting Section Supervisor, Waste Management Division, Town of Bethlehem, and, via fax and U.S. Post to: Bryan K. Gould, Esquire, counsel for North Country Environmental Services, and Maureen Smith, Attorney General's Office.

Date: May 16, 2003


Brenda E. Keith,